



2022 Second Quarter Newsletter

Rule Proposals, Risk Alerts, & More for Investment Advisers

Market volatility, high inflation and other macroeconomic headwinds highlight this quarter's headlines. While the expected duration of the current slide is up for debate, many managers are turning their minds to capital preservation and how best to address the challenging environment.

Market uncertainties aside, the regulatory headlines were down quarter over quarter. Let's get into it.

This Quarter's Headlines

MNPI Risk Alert

On April 26, the SEC's Division of Examinations ("EXAMS") issued a [Risk Alert](#) that summarized issues observed by EXAMS staff regarding Material Non-Public Information. EXAMS noted that investment adviser policies and procedures around the use of alternative data and expert networks, as well as the identification and monitoring of potential conflicts related to value-add investors, were often not adequate or were not followed. Additionally, the risk alert highlighted the importance of properly identifying access persons and the timely submission of employee quarterly transaction statements, among other things. For more information, read HighCamp's [summary of the Alert](#).

Fort Worth SEC Roundtable

On May 24, the SEC's Fort Worth Regional Office held a roundtable that focused on 2022 Examination Priorities as well as observations from recent exams. Marshall Gandy, National Associate Director of the SEC's Investor Program, took questions from participants. The following were some of the topics discussed:

- The New Marketing Rule – Mr. Gandy was asked whether the SEC planned to bring enforcement actions starting in November 2022 against firms not in compliance with the new rule. Mr. Gandy stated this would not be happening. While the SEC will be reviewing firms' marketing after the compliance date, they expect to issue guidance rather than bringing enforcement claims at the outset. He also stated the Policy Division will be putting out further guidance before November.
- Onsite reviews – Mr. Gandy stated that the SEC tentatively plans to resume onsite reviews in Q4 2022, though they will continue to do many remotely.
- Electronic messaging – Mr. Gandy stated that advisers should review EXAMS's [Risk Alert](#) regarding electronic messaging, and that firms should have policies and procedures stating that employee violations of electronic communications policies are cause for disciplinary action or termination. Finally, Mr. Gandy recommended mandatory training and employee attestations on the topic.

Office of the Investor Advocate Annual Report

On June 30, the Office of the Investor Advocate ("Office") issued its annual [report](#) on policy objectives for fiscal year 2023 (which commences October 1). The Office's statutory mandate is broad, but it spends much of its time monitoring rulemakings from the Commission and SROs. The Office is prioritizing the following issues in FY 2023: crypto-assets; equity market structure; **private fund adviser regulation**; ESG disclosures for public companies, investment advisers, and investment companies; **fund names**; **open and machine-readable data**. (*Note: the **bolded** items are new.*)

Commissioner's Statement on CCO Liability

On July 1, Commissioner Hester M. Pierce released a [statement](#) sharing her concern about CCO liability. In it, she stressed that under ordinary circumstances, a registrant's ultimate compliance obligation belongs to the firm, not the

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CCO. Additionally, she went on to endorse a CCO liability [framework](#) proposed by the Compliance Committee of the New York City Bar Association. For more analysis, read HighCamp's [CCO liability article](#).

In The Pipeline

Proposal to Enhance and Standardize Climate Related Disclosures for Investors

On May 25, the SEC proposed a new [ESG rule](#) for both registered investment advisers and exempt reporting advisers (collectively, "Advisers"). Under the proposed rule, advisers would have to specify whether they or their private funds pursue ESG "Integration Funds," "ESG-Focused Funds," or "Impact Funds," and disclose certain ESG-related information on Form ADV Part 1A and Part 2A, including methods of analysis, financial industry affiliations, and proxy voting policies, among other things. For a more detailed analysis, read HighCamp's [summary](#) of the proposed rule.

Did You Know?

JP Morgan agreed to a \$200 million settlement in December 2021 for alleged "widespread and longstanding failures by the firm and its employees" to preserve staff communications on personal mobile devices and messaging apps. Bank of America, Morgan Stanley, and Citigroup have reportedly set aside similar amounts for matters connected with unauthorized use of personal phones.¹ Investment advisers should be reviewing their retention policies and employee training in this challenging area.

Q2 Key Enforcement Actions

Exempt Reporting Adviser Settles Over Alleged Financial Audit Misstatements

On June 30, the SEC [charged](#) an exempt reporting adviser with failing to obtain a financial audit, which was allegedly promised to investors in private fund offering materials. Exempt reporting advisers are not required by Rule 206(4)-2 to procure or deliver private fund audits but are prohibited from making misrepresentations under the anti-fraud provision of the Advisers Act.

Disproportionate Allocation of Undisclosed Expenses to Private Fund

On June 14, the SEC [charged](#) an investment adviser with disproportionately allocating undisclosed expenses to a private fund it advised. The charge stems from a take-private transaction involving a group of third-party equity co-investors. Co-investors negotiated terms that they would not bear expenses relating to the credit facility used to finance the transaction, so the Adviser's main fund allegedly bore a disproportionate share of those expenses. The adviser had allegedly failed to disclose to the fund and its limited partner advisory committee that the fund would bear a portion of the expenses in excess of its pro rata investment.

Private Equity Manager Alleged to have Delayed Portfolio Company Write-Downs for Fundraising Purposes

On June 13, the SEC [charged](#) a former investor relations employee with a role in delaying the write-downs of portfolio company valuations to avoid a negative impact on fundraising. This case suggests additional scrutiny by compliance officers of valuations and performance metrics leading up to and during fundraising periods may be warranted.

Valuation of Mutual Fund Assets

On June 3, the SEC [charged](#) a mutual fund adviser with valuation violations, alleging that the adviser failed to implement policies requiring it to assist with the process for determining the fair value of fund holdings. According to

¹ [https://www.reuters.com/business/finance/bank-america-puts-aside-200mln-probe-into-bankers-use-personal-devices-2022-07-18/#:~:text=NEW%20YORK%2C%20July%2018%20\(Reuters,matter%20to%20be%20settled%20soon.](https://www.reuters.com/business/finance/bank-america-puts-aside-200mln-probe-into-bankers-use-personal-devices-2022-07-18/#:~:text=NEW%20YORK%2C%20July%2018%20(Reuters,matter%20to%20be%20settled%20soon.)



the order, the portfolio manager had purchased small "odd-lot" bonds and the fund valued those holdings at higher prices provided by a pricing service for larger "round-lot" bonds (i.e. using "round lot" pricing for "odd lot" positions). Second, the order finds that from January 2017 to February 2019, the adviser failed to adopt and implement policies to oversee the fund's portfolio manager when the portfolio manager improperly placed bids on bonds the fund already held in order to increase the prices the fund relied on to value its holdings. This case is a reminder to have adequate separation of controls and testing and bid selection around investment professionals' roles in portfolio valuations.

Misstatements and Omissions Concerning ESG Considerations

On May 23, BNY Mellon Investment Adviser ("BNY") was [charged](#) for misstatements and omissions relating to its integration of ESG considerations into investment decisions for certain mutual funds. BNY represented to investors that an affiliated sub-adviser considered ESG factors in its investment research process for all investments, but EXAMS staff found that research materials for numerous investments did not include an ESG quality review score as was required under the sub-adviser's policies.

Q3 Upcoming Key Reporting and Disclosure Deadlines

July 30	Employees' Transaction Reports Due for Q2 2022
August 15	Form 13F Quarterly Filing Due for Q2 2022
August 29	Form PF Due for Large Hedge Fund Advisers

About HighCamp Compliance

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